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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/657,936

09/09/2003

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1601

7590

07/09/2007

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EXAMINER

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ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

07/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/657,936
Filing Date: September 09, 2003
Appellant(s): HUANG, SUNNY E.L.

MAILED

JUL 09 2007

Group 3700

Paul M. Denk
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 29, 2007 appealing from the Office action mailed September 26, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(8) Evidence Relied Upon

4,825,892	NORMAN	5-1989
5,964,533	ZIGLAR	10-1999
6,325,086	SHINNER et al	12-2001
5,975,101	ZHENG	11-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Norman (4,825,892). Norman discloses a collapsible container capable of being used for storage (Figures 17, 18) with a continuous one piece framework (50, Figure 1, column 7, lines 35-45) that can be erected to form the sides and base of the container in combination with the fabric walls and base or flattened into a non-use position (Figures 5-8). A piece of fabric material is applied over select surfaces of the framework.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Ziglar (5,964,533). Ziglar discloses a collapsible container capable of being used for storage (Figure 26F) with a continuous one-piece framework (column 12, lines 47-56 and column 20, lines 14-16) that can be erected to form the sides and base of the container in combination with the fabric walls and base or flattened into a non-use position. A piece of fabric material is applied over select surfaces of the framework (column 10, lines 26-35).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norman in view of Shinner et al (6,325,086).

6. Regarding claim 3, Norman discloses the invention except for the framework formed of carbon or other resilient composite material. Shinner et al discloses a similar container with framework made from a resilient composite material (column 13, lines 6-9 and lines 15-18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a resilient composite material as disclosed by Shinner et al in the framework of the container disclosed by Norman since it is known in the art to use resilient composite materials for framework in similar containers.

7. Regarding claim 4, Norman discloses the fabric is formed of cloth or other covering material (column 4, lines 56-63).

8. Regarding claim 5, Norman discloses the container is capable of forming into a triangular laminar structure (Figure 6).

9. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziglar in view of Shinner et al (6,325,086).

10. Regarding claim 3, Ziglar discloses the invention except for the framework formed of carbon or other resilient composite material. Shinner et al discloses a container with framework made from a resilient composite material (column 13, lines 6-9 and lines 15-18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a resilient composite material as disclosed by Shinner et al in the framework of the container disclosed by Ziglar since it is known in the art to use resilient composite materials for framework in collapsible containers.

11. Regarding claim 4, Ziglar discloses the fabric is formed of cloth or other covering material (column 10, lines 26-35).

12. Regarding claim 5, Ziglar discloses the container is collapsible and capable of being collapsed and coiled (column 16, lines 3-15). Such a framework would also be capable of forming into a triangular laminar structure.

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Norman in view of Zheng (5,975,101). Norman discloses the invention except for a cowl formed from the fabric material to close the upper edge for the framework. Zheng discloses a collapsible framework with fabric material and further discloses a cowl formed from the fabric material to close the upper edge for the framework (Figure 2, column 5, lines 37-44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a cowl formed from the fabric material to close the upper edge for the framework as disclosed by Zheng in

the container disclosed by Norman to eliminate the need for an extra sleeve component and time and labor to attach it to the container.

(10) Response to Argument

Claims 1, 2

With regard to the Norman reference, appellant argues that Norman does not anticipate the instant invention because, in the container of Norman, the frame has a crossover point and is twisted while the elected species of the instant invention has a different framework. In response, it is noted that the features upon which applicant relies (i.e., the frame without a crossover point or twist) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Norman discloses a collapsible container capable of being used for storage as shown in Figures 17 and 18 with a continuous one piece framework as shown in Figure 1 and discussed in column 7 at lines 35-45. It has a fabric material applied over selected surfaces of the framework (see column 4, lines 56-63) and can be flattened to a non-use position. As such, Norman meets the structural limitations of claims 1 and 2.

With regard to the Ziglar reference, appellant argues that Ziglar does not anticipate the present invention because Ziglar has a two piece cover while the elected species of the instant invention has an open top. In response, it is noted that the feature upon which applicant relies (i.e., the open top) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Ziglar discloses a collapsible container capable of being used for storage (Figure 26F) with a continuous one-piece framework as discussed in column 12, lines 47-56 and column 20, lines 14-16. It can be erected to form the sides and base of the container or flattened into a non-use position. A piece of fabric material is applied over select surfaces of the framework (see column 10, lines 26-35). As such, Ziglar meets the structural limitations of claims 1 and 2.

Claims 3, 4, 5, 11

With regard to claim 3 and the Skinner et al reference, appellant argues that Skinner et al does not disclose the structure of the instant invention, in particular the one loop frame construction. In response, Norman and Ziglar disclose the claimed structure of the instant invention as discussed above. Skinner et al is not relied upon to teach the structure of the instant invention. Skinner et al is used with both Norman and Ziglar to teach that the framework can be made from a resilient composite material as disclosed in column 13, lines 6-9 of Skinner et al. Skinner et al discloses a similar collapsible container and it would be obvious to one of ordinary skill in the art that the framework of Norman or Ziglar could be made from a resilient composite material as taught by Skinner et al.

With regard to claim 4 and the Norman and Ziglar references, appellant argues that the cloth used as the fabric covering by both Norman and Ziglar is different than the cloth intended for use in the instant invention. In response, claim 4 recites the fabric is "formed of one of cloth, or other covering material." Both Norman and Ziglar meet the

limitation that the fabric be formed of cloth (see column 4, lines 56-63 of Norman and column 10, lines 26-35 of Ziglar). If, however, one disagrees with the characterization of the fabrics of Norman and Ziglar as cloth, both Norman and Ziglar would most certainly meet the limitation of the fabric being other covering material.

With regard to claim 5 and both the Norman and Ziglar references, appellant argues that Norman and Ziglar do not show a compact triangular collapsed framework and folds in parallel planes. In response, it is noted that the features upon which applicant relies (i.e., a compact triangular collapsed framework and folds in parallel planes) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to claim 5 and the Norman reference, appellant argues that the folded framework of Norman does not fold into a triangular laminar structure but assumes the shape of saddles, as described by Norman, and is the further collapsed into round loops. In response, claim 5 recites, "the container, when flattened, is capable of forming into a triangular laminar structure." Figure 6 of Norman discloses the container collapsed into a triangular laminar structure, the terminology of Norman notwithstanding. That Norman may further collapse the container does not take away from the fact that it is capable of being collapsed into a triangular laminar structure.

With regards to claim 5 and the Ziglar reference, appellant argues that that Ziglar shows the container collapses into a group of round coils folded concentrically. In response, Ziglar discloses the container is collapsible and capable of being collapsed

and coiled (column 16, lines 3-15). Ziglar also discloses the container can be collapsed into rectangular laminar structure as shown in Figure 11. A flexible framework of the type present in Ziglar would also be capable of forming into a triangular laminar structure.

14. With regards to claim 11 and the Zheng reference, appellant argues that Zheng does not disclose the structure of the instant invention and collapses in a different manner than the instant invention, and it is not seen how the container of Zheng is obvious. In response, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Norman and Zheng are collapsible containers with collapsible framework and fabric covering surfaces of the framework. Norman discloses the claimed structure of the instant invention as discussed in the preceding paragraphs. Zheng is used as a teaching for forming a cowl from the fabric material to close the upper edge of the framework (see Figure 2 and column 5, lines 37-44 of Zheng). Norman and Zheng are analogous art and forming a cowl from the fabric material forming the covering would be knowledge generally available to one of ordinary skill in the art.

Art Unit: 3781

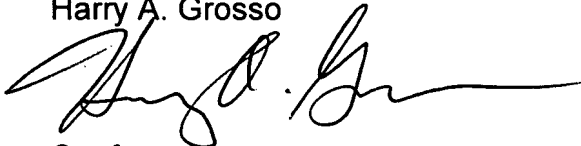
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

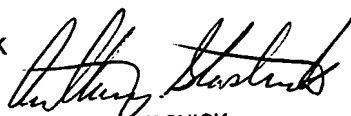
Respectfully submitted,

Harry A. Grosso



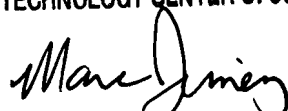
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